Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1571

STATE OF DELAWARE,

Petitioner,

v.

WILLIAM J. PROUSE, III,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

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CHARLES M. OBERLY, III
State Prosecutor

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No.

STATE OF DELAWARE,

Petitioner,

V.

WILLIAM J. PROUSE, III,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Delaware entered in the above-captioned case on February 1, 1978.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of the State of Delaware, which has not yet been reported, is Appendix A, attached hereto. The opinion of the Superior Court of the State of Delaware, also unreported, is Appendix B, attached hereto.

JURISDICTION

The judgment of the Delaware Supreme Court was entered February 1, 1978. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment Four:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Amendment Fourteen, Section One:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws."

STATUTE INVOLVED

The section of Delaware's Uniform Controlled Substances Act, involved here, 16 DEL. C. §4754, is Appendix C attached hereto.

QUESTION PRESENTED

Are the Fourth and Fourteenth Amendments to the United States Constitution violated if police officers randomly stop motorists for the purpose of conducting driver's license and vehicle registration checks?

STATEMENT OF THE CASE

During the evening of November 30, 1976, Patrolman Anthony Avena of the New Castle County Police Department was on road patrol. At approximately 7:20 p.m. Patrolman Avena stopped an automobile being operated by Respondent, William J. Prouse, III. Prior to stopping Respondent's vehicle, the officer had observed no traffic or equipment violations nor any unusual or suspicious activity. Respondent was stopped for a spot-check of his license and registration.

After stopping Respondent's vehicle, Patrolman Avena approached it on foot. As he got to the back of the vehicle, he observed that its window was partly open and he detected the smell of marijuana coming from the vehicle. The officer then asked Respondent and the vehicle's other occupants to step outside. As they complied with his request, the officer observed a cellophane bag protruding from underneath the front seat. The bag, upon closer inspection, was found to contain green plant-like material.

The officer then searched the persons of the occupants of the vehicle. During this search marijuana was discovered in Respondent's pocket. As a result of the officer's discovery, Respondent was indicted for Possession of a Non-Narcotic Schedule I Substance in violation of 16 DEL. C. §4754, (App.C). Respondent moved in the Delaware Superior Court for an order suppressing the

evidence against him on the ground that it had been obtained during an illegal detention. After an evidentiary hearing, the Superior Court granted Respondent's motion.

Petitioner appealed to the Supreme Court of the State of Delaware pursuant to 10 DEL. C.§9902(b) (c), (App. A-2). In affirming the Superior Court ruling, the Delaware Supreme Court held:

> ". . . [a] random stop of a motorist in the absence of specific articulable facts which justify the stop by indicating a reasonable suspicion that a violation of the law has occured is constitutionally impermissible and violative of the Fourth and Fourteenth Amendments to the United States Constitution. It follows that a random stop solely for the purpose of a documents check is an unreasonable and unconstitutional detention of those in the stopped vehicle."

The facts of this case have never been in dispute and they are set out in greater detail in the opinions below. (App. A, B).

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS A NEW AND IMPORTANT QUESTION OF FEDERAL LAW.

The Supreme Court of Delaware, while recognizing the state interest in enforcing driver licensing and vehicle registration laws, denied the police the use of the most effective method for enforcing those laws–the random stopping of motorists. If allowed to stand, the Delaware decision will adversely affect law-enforcement in Delaware, and perhaps elsewhere, on a day-to-day basis.

The significance of the decision below is not limited to a single defendant nor even to a single state. Every state in the Union licenses the drivers who use its roads. Motor vehicle registration is likewise universal. The question of the validity of random stops, which is presented here in a simple and uncontrived manner, is, therefore, of concern to all of the states.

The facts of this case highlight another significant aspect of random stops. Pursuant to the stop of Respondent for a documents check, evidence of the commission of a crime was seized. Because the Delaware Courts felt constrained by the Fourth Amendment, the evidence was suppressed under *Mapp v. Ohio*, 367 U.S. 643 (1961).

If the confusion and inconsistency which is developing as each jurisdiction is called upon to interpret the Federal Constitution (see *infra*), is to be limited, it is respectfully submitted that this Court must provide its definitive guidance in this case.

II. THE DECISION BELOW IS IN CONFLICT WITH OTHER FEDERAL AND STATE COURT DECISIONS.

Although Delaware's interpretation of the Fourth Amendment, *inter alia*, follows *Commonwealth v. Swanger*, 453 Pa. 107, 307 A.2d 875 (1973) and *People v. Ingle*, 36 N.Y.2d 413, 369 N.Y.S.2d 67, 330 N.E.2d 39 (1975) and is in accord with the views of the District of Columbia Circuit Court of Appeals, *United States v. Montgomery*, 561 F.2d 875 (D.C. Cir. 1977) and the Eighth Circuit Court of Appeals, *United States v. Nicholas*, 448 F.2d 622 (8th Cir. 1971), all of those cases are directly in conflict with the decision of the Tenth Circuit Court of Appeals in *United States v.*

Jenkins, 528 F.2d 713 (10th Cir. 1975), the Ninth Circuit Court of Appeals in *Lipton v. United States*, 348 F.2d 591 (9th Cir. 1975), and the Fifth Circuit Court of Appeals in *Myricks v. United States*, 307 F.2d 901 (5th Cir.), *cert. dismissed*, 368 U.S. 1015 (1967). Moreover, the Delaware decision is contrary to the state court decisions in *State v. Holmberg*, 194 Neb. 337, 231 N.W.2d 672 (1975), *State v. Allen*, 282 N.C. 503, 194 S.E.2d 9 (1973), and *Leonard v. State*, 496 S.W.2d 576 (Tex. Crim. App. 1973).

At the heart of the growing discord among the state and federal courts is the question of the proper interpretation of the Fourth Amendment. As noted above, this conflict will grow until this Court rules whether random stops are constitutionally permissible.

III. THE DECISION BELOW IS INCORRECT.

In *United States v. Brigoni-Ponce*, 422 U.S. 873, 883 n.8 (1975), this Court expressly declined to rule that state and local enforcement agencies are without power to conduct such limited stops as are necessary to enforce laws regarding driver's licenses and vehicle registration. There is a long history evidencing the utility of license and registration checks and such checks are routinely "accepted by motorists as incident to highway use." *United States v. Martinez-Fuerte*, 428 U.S. 543, 560 n.14 (1976). The Delaware Supreme Court in this case recognized the legitimate state interest in enforcing licensing and registration laws. (App. A-9). Nevertheless, it went on to adopt what it called "a rigid invalidity rule." (App. A-10).

This Court has never created rigid rules for analyzing governmental conduct under the Fourth Amendment.

Instead, as the Delaware Supreme Court recognized, the watchword in such analysis is "reasonableness." (App. A-6). The standard for judging the reasonableness of an official detention is found in *Terry v. Ohio*, 392 U.S. 1 (1968). *Terry* calls for a balancing of the governmental need for an intrusion against the actual impact of the intrusion on the citizen's personal security.

Terry involved ". . . a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment . . ." *Terry*, *supra* at 17. The intrusion there was reasonable, however, when balanced against the risk to the police officer and others in the area. By comparison, this case involves detentions which are slight and acceptable to those detained. *Martinez-Fuerte*, *supra*. Respondent was not even ordered out of his vehicle until after the officer observed evidence of a crime in progress.

In this case, the Delaware Supreme Court did not analyze the impact of the intrusion it mechanically forbade. Instead, the Court focused on the mere possibility that a random stop, in some other case, might be discriminatory. No discrimination was evident here. The theoretical potential for discrimination in the application of the random stop does not justify prohibiting its use where no discrimination is actually demonstrated. This is especially true where, as here, a distinction is drawn between random and systematic stops. The systematic stop clearly causes greater inconvenience to the motorist who must wait at a roadblock. Moreover, the location of the roadblock itself may be the product of a discriminatory motive.

When the state interest in making certain that only licensed drivers and registered vehicles are at large on its

roads is balanced against the minimal inconvenience random stops cause innocent citizens, it is clear that such stops are constitutionally permissible. The decision of the Supreme Court of the State of Delaware, being to the contrary, is incorrect.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD R. WIER, JR.
CHARLES M. OBERLY, III
M. P. SHAFRAN
FRED S. SILVERMAN
Counsel for Petitioner

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellant,	§	
	§	
v.	§	No. 102, 1977
	§	
WILLIAM J. PROUSE, III,	§	
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: December 13, 1977
Decided: January 30, 1978

Before HERRMANN, Chief Justice, DUFFY and McNEILLY, Justices.

Upon appeal from Superior Court. Affirmed.

Gregg E. Wilson, Deputy Attorney General, Wilmington, for plaintiff below, appellant.

David M. Lukoff, Assistant Public Defender, Wilmington, for defendant below, appellee.

McNEILLY, Justice

APPENDIX A

The State of Delaware appeals, pursuant to 10 Del.C. § 9902(b) and (c),* a Superior Court order which granted defendant's motion to suppress evidence. The challenged evidence was obtained by police during a random stop of defendant's automobile, and the issue raised is whether the police may arbitrarily stop and detain persons operating motor vehicles when the officers involved have no reasonable suspicion that the occupants of the stopped vehicle have or will violate the law. Because we are of the opinion that non-systematic stops by police, who have no reasonable suspicion that a legal violation has occurred, violate Federal and State constitutional guarantees, we affirm the Superior Court order and dismiss this appeal.

I.

While on routine patrol Officer Anthony Avena of the New Castle County Police stopped an automobile operated by defendant-Prouse to conduct a driver's license and vehicle re-

* 10 Del.C. § 9902(b) and (c) read as follows:

§ 9902. Appeal as of right.

(b) When any order is entered before trial in any court suppressing or excluding substantial and material evidence, the court, upon certification by the Attorney General that the evidence is essential to the prosecution of the case, shall dismiss the complaint, indictment or information or any count thereof to the proof of which the evidence suppressed or excluded is essential. Upon ordering the complaint, indictment or information or any count thereof dismissed pursuant to the Attorney General's certification, the reasons of the dismissal shall be set forth in the order entered upon the record.

(c) The State shall have an absolute right of appeal to an appellate court from an order entered pursuant to subsection (b) of this section and if the appellate court upon review of the order suppressing evidence shall reverse the dismissal, the defendant may be subjected to trial. (10 Del.C. 1953, § 9902; 57 Del. Laws, c.133; 58 Del. Laws, c. 412, § 1.)

gistration check. Prior to the stop the officer observed no traffic or equipment violations, and had no indication that any criminal activity had been or would be perpetrated by defendant or the other occupants of his car. Officer Avena candidly testified that defendant's car was randomly chosen from other vehicles on the road to be the subject of a license and registration check, and that he regularly made similar routine stops of motor vehicles when not answering complaints. As the officer approached defendant's automobile he smelled the aroma of marijuana emanating from the car. While observing the occupants of the car step out into the street, Officer Avena noticed a cellophane bag containing leafy vegetable matter protruding from under the front seat. Suspecting that it contained marijuana, Officer Avena seized the bag and, thereafter, placed defendant under arrest. Subsequently, defendant was indicted for possession of a non-narcotic Schedule I substance in violation of 16 Del.C. § 4754.*

* 16 Del.C. § 4754 reads as follows:

§ 4754. Prohibited acts D; penalties.

It is unlawful for any person knowingly or intentionally to possess, use or consume any controlled substance or counterfeit substance classified in Schedule I, II, III, IV or V not a narcotic drug unless the substance was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or except as otherwise authorized by this chapter. Any person who violates this section upon conviction shall be fined not more than $500 and imprisoned not more than 2 years. (16 Del.C. 1953, § 4754; 58 Del. Laws, c. 424, § 1.)

Defendant moved in Superior Court for an order suppressing the evidence against him on the ground that it had been obtained during an illegal detention. After an evidentiary hearing the Superior Court granted defendant's motion. The State concedes that defendant was detained in circumstances where the investigating officer had no reasonable suspicion that any criminal activity or motor vehicle violation had or would take place. However, the State asserts that the practice of randomly stopping motor vehicles for license and registration examinations is both constitutionally permissible, and necessary to properly enforce motor vehicle regulations.

The issue of the legal validity of systematic, roadblock-type stops of a number of vehicles for license and vehicle registration check is not now before the Court. Systematic stopping procedures entail limited exercise of discretion concerning which vehicles to stop, and, therefore, pose legal issues different in nature from those presented by the random stop practice challenged here. We now focus on the competing State and individual interests which must be examined in order to determine the validity of random stopping procedures.

II

The Fourth Amendment to the United States Constitution provides;

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The constitutional proscription against unreasonable searches and seizures is made applicable to the States by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Mapp v. Ohio, 367 U.S. 643 (1961); United States ex rel. Dyton v. Ellingsworth, 306 F.Supp. 231 (D.Del. 1969). The Delaware Constitution Article I, § 6 is substantially similar to the Fourth Amendment and a violation of the latter is necessarily a violation of the former. State v. Moore, Del. Super., 187 A.2d 807 (1963). Evidence seized in disregard of these constitutional provisions is inadmissible at the trial of the person whose rights have been violated. Mapp v. Ohio, supra; Schaffer v. State, Del. Supr., 184 A.2d 689 (1962).

The precise legal issue raised in this appeal is whether the stop of defendant's automobile was an unconstitutional seizure within the meaning of the Fourth and Fourteenth Amendments. While a temporary stop or detention of a motor vehicle and its occupants is not normally described as a seizure, the Fourth Amendment has been construed to protect against unreasonable governmental intrusions into the privacy of the individual, regardless of whether they are labeled stops, detentions, frisks or seizures. Terry v. Ohio, 392 U.S. 1 (1968); Sibron v. New York, 392 U.S. 40 (1968). Therefore, since the police action here entailed an interference with defendant's right to free access to public highways, it is an official intrusion which must be examined to see if it accords with Fourth Amendment

requirements. If the police acted unreasonably then the evidence gathered as a result of their activities must be suppressed. Schaffer v. State, supra.

A search or seizure pursuant to a duly issued warrant is presumptively valid because a determination of the reasonableness of the intended action is made prior to its inception by a neutral Magistrate. Johnson v. United States, 333 U.S. 10 (1948); Saienni v. State, Del. Supr., 346 A.2d 152 (1975). There are instances in which a warrant is unnecessary for a legitimate search and seizure due to circumstances which make a warrantless search reasonable. See Carroll v. United States, 267 U.S. 132 (1925). Included within the warrant exception are cases where law officers have probable cause to believe that an automobile, or other readily moveable vehicle, is carrying contraband, is being driven in violation of the motor vehicle laws, or the occupants are or have been committing criminal violations. Carroll v. United States, supra; Freeman v. State, Del. Supr., 317 A.2d 540 (1974). Where a legal arrest has been made, a police officer may search the arrested person without a warrant. Ker v. California, 374 U.S. 23 (1963); Lido Social Club v. State, Del. Super., 86 A.2d 859 (1952). A protective frisk of one suspected of criminal activity may also be conducted by police. Terry v. Ohio, supra. The essential element necessary for a permissible governmental intrusion is reasonableness, with a constitutionally mandated

preference for warrants absent exceptional circumstances. Johnson v. United States, supra.

Because an automobile was the subject of the stop in the case at bar, we may invoke the Carroll exception to eliminate any warrant requirement. However, absent here is the element of probable cause which was essential to the reasonableness and legitimacy of the search and seizure in Carroll. As the Court said in Carroll:

> It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise. Carroll v. United States, supra at 153, 154..

We note that the Carroll decision has been cited with approval by the Supreme Court of the United States as recently as 1977. See United States v. Ramsey, __ U.S. __, 97 S.Ct. 1972 (1977).

The search and seizure of defendant's vehicle must be justified, if at all, on grounds other than a finding that the investigating officer had probable cause to make the stop, since the State agrees that he did not. The critical question is

whether there are any legitimizing factors present here which would justify the police action. The United States Supreme Court has set forth the following standard for judging the reasonableness of an official search or seizure:

> [I]t is necessary first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen, for there is no ready test for balancing the need to search [or seize] against the invasion which the search [or seizure] entails. Terry v. Ohio, supra at 20, 21.

The State seeks to justify the initial detention of defendant* on the ground that a documents check is a reasonable form of limited detention of those operating motor vehicles on State highways. The State points to the inherent danger involved in the operation of motor vehicles, as evidenced by the large number of traffic related injuries which occur in this State and the United States generally, and concludes that the State has a substantial interest in regulating the use of the highways, and enforcing its licensing and vehicle registration laws. The State contends that the most effective method of enforcing its licensing and registration laws is to randomly stop motorists to check compliance with those laws. The State completes its argument by asserting that because they are

* We assume, as all counsel involved herein have, that if the initial detention of defendant was constitutional, all subsequent police acts were also since the marijuana was in the "plain view " of Officer Avena and as contraband it was subject to immediate seizure. Ker v. California, supra; Miller v. State, Del. Supr., 310 A.2d 867 (1973).

necessary to further a legitimate State interest, random vehicle stops for the limited purpose of conducting a documents check are reasonable and constitutional even in the absence of probable cause.

We rule that before the government may single out an automobile to stop it, there must exist specific facts justifying the intrusion. Conversely, a random stop in the absence of specific justifying facts is unreasonable and unconstitutional. See Commonwealth v. Swanger, Pa. Supr., 307 A.2d 875 (1973), and People v. Ingle, N.Y. Ct. App., 369 N.Y.S.2d 67 (1975). We recognize the legitimate state interest in enforcing licensing and registration laws, and note that in fact situations similar to that of the present case other courts have reached the conclusion that the state interests outweigh the interests of the individual. See State v. Holmberg, Neb. Supr., 231 N.W.2d 672 (1975), and State v. Williams, S.C. Supr., 116 S.E.2d 858 (1960) However, the factor which in our opinion makes random stops, absent justifying facts, unreasonable is the inherent arbitrariness of the procedure. The flaw in the process is that absolute discretion and authority is conferred upon the police to detain whomever they desire for whatever reason on the pretense of a documents check stop. Thus an officer prejudiced against any visibly identifiable group could stop a disproportionate number of persons in the group. No discrimination has been shown in the stop under examination here, but the evil of the possi-

bility of discriminatory stops does exist. If we were to accept the State's position, discriminatory stopping procedures could be practiced with little or no chance for judicial review.

It has been asserted that a rigid invalidity rule as we adopt here is too broad, and that only where actual discriminatory intent is shown to have motivated the stopping officer, or where a license check is used as a pretext to investigate unrelated crime, should the random stop be illegal. See Palmore v. United States, D.C.Ct App., 290 A.2d 573 (1972). However, burdening a criminal defendant with the task of proving that a police officer acted with an illegal subjective intent would as a practical matter emasculate any limited rule concerning random stopping procedures, and in turn, emasculate Fourth Amendment rights.*

We hold, therefore, that a random stop of a motorist in the absence of specific articulable facts which justify the stop by indicating a reasonable suspicion that a violation of the law has occurred is constitutionally impermissible and violative of the Fourth and Fourteenth Amendments to the United States Constitution. It follows that a random stop solely for the purpose of a documents check is an unreasonable and unconstitutional detention of those in the stopped vehicle. Because the stop in the present case was arbitrary, and not based on

* For a thorough discussion of this important point See Note, Automobile License Checks and the Fourth Amendment, 60 Va. L.R. 666 (1974).

justifying facts, it was illegal, and the evidence gathered as a result of the stop must be excluded from defendant's trial. The Superior Court order granting defendant's motion to suppress was correct as a matter of law.

AFFIRMED.

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOSEPH T. WALSH
JUDGE

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RE: State v. William J. Prouse
I76-12-0213

Submitted: March 4, 1977
Decided: March 10, 1977

Gentlemen:

Defendant, charged with Possession of Marijuana, has moved to suppress the evidence against him on the ground that the seizure of the contraband arose from an unauthorized detention of him by the police. The Court conducted an evidential hearing at which the sole witness was the arresting police officer. After the filing of memoranda this is the Court's decision on the motion.

The arresting officer testified that on November 30, 1976, at approximately 7:20 p.m. while on routine parole he decided to stop a motor vehicle operated by the defendant for a routine driver's license and registration check. He testified that he observed no traffic violations; no motor vehicle equipment violations; no erratic or unusual driving and neither the lateness of the hour nor the location of the automobile gave him any suspicion that the driver or the occupants were engaged in improper activity. The officer testified that when he approached the automobile he smelled what appeared to him to be burning marijuana and upon asking the occupants to emerge from the car he saw a cellophane bag protruding from under the seat. This, in turn, led to the search of the persons of the occupants. Upon the defendant was found material which the State contends was marijuana.

The State concedes that there was no basis for the officer's stopping of this automobile other than his desire to conduct a

license and registration check on a random basis. Defendant contends that such a stop is a detention without cause and constitutionally improper.

The lawfulness of a seizure of evidence which stems from a detention for a routine license or registration check has been the comment of decisions in several jurisdictions. While the decisions are not uniform, the trend appears to be one of validating such seizures where the same are the product of systematic checks under objective standards. Thus, approval has been given to seizures resulting from road blocks on the theory that such monitoring is indiscriminate and not based on the whim or caprice of the police officer. Several decisions relied upon by the State involve seizures arising from road blocks and are thus clearly distinguishable. State v. Smolen, App. Div. Conn., 232 A.2d 330 (1967); City of Miami v. Aronovitz, Supr. Ct. Fla., 114 So.2d 784 (1959); State v. Severance, N.H. Supr., 237 A.2d 683 (1968). Equally distinguishable are those decisions in which the motivation for the stop was the lateness of the hour or suspicious activities or appearance of the driver or occupants. Glover v. State of Maryland, Md. App., 287 A.2d 333 (1972); State v. Braxton, N.J. Super., 268 A.2d 40 (1970); State v. Allen, N.C. Supr., 194 S.E.2d 9 (1973); State v. Williams, S.C. Supr., 116 S.E.2d 858 (1960). Two cases advanced by the State appear to sanction a non-systematic random stop for license checks. Palmore v. U. S., D.C. App., 290 A.2d 573 (1972); State v. Holmberg, Neb. Supr., 231 N.W.2d 672 (1975).

The New York Court of Appeals in People v. Ingle, N.Y. Ct. App., 369 N.Y.S.2d 67 (1975) reversed the conviction of a defendant from whom drugs were seized in a factual situation identical to that now under consideration. The Court pointed out that there must be some valid reason, however slight, for the singling out of a particular automobile and its operator for a stop and an inspection to determine compliance with the motor vehicle law. The Court went on to note that a routine check of automobiles by some non-arbitrary, systematic procedure such as a road block or check point is permissible but where there is no systematic routine or objective standard against which to test the stop it can only be assumed that the stop is the result of "arbitrary caprice or curiosity" by the officer. In Ingle the Court rejected the contention that the right to drive was a privilege, pointing out that such a distinction is not given common acceptance and gratuitous, arbitrary or unjustified restraint by the government regardless of its context is not to be condoned. The Court emphasized that the factual basis required to support a traffic stop may be minimal, that is, not rising to the level of probable cause.

The Supreme Court of Pennsylvania has adopted a similar approach in Commonwealth v. Swanger, Supr. Ct. Pa., 307 A.2d 875 (1973). To the same effect is State v. Fisher, Ct. App. Ore., 484 P.2d 864 (1971).

I conclude that the rationale of Ingle and Swanger represents the better view that an arbitrary, unsystematized license check without objective standards has no legal sanction. It should be emphasized that the Court is limiting this decision to a capricious stop. This holding is not intended to apply to road blocks or other systematic traffic checks. In any event, I am satisfied that the stop by the officer in this case was without authority and any evidence secured as a result of that stop must be suppressed. Accordingly, the motion to suppress is granted.

IT IS SO ORDERED.

Very truly yours,

JTW:llf
cc: Prothonotary

§ 4754. Prohibited acts D; penalties.

It is unlawful for any person knowingly or intentionally to possess, use or consume any controlled substance or counterfeit substance classified in Schedule I, II, III, IV or V not a narcotic drug unless the substance was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or except as otherwise authorized by this chapter. Any person who violates this section upon conviction shall be fined not more than $500 and imprisoned not more than 2 years.